

NTSB Order No. EA-4738

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 11th day of January, 1999

Respondent .

Docket SE-14785

Respondent, piloting a Piper Navajo, flew it from Sidney to Wolf Point, MT, whereupon he set the aircraft's parking brake and went inside the terminal, leaving the engines running at idle (600 rpm, Tr. at 44) and the wheels unchocked. The law judge, rejecting claims that the procedure was not unsafe, that it was authorized by respondent's employer, and that it was a result of difficulties in starting the aircraft, found that respondent's behavior was reckless, potentially endangering the life and

property of others, in violation of 14 CFR 91.13(a).<sup>1</sup> On appeal, respondent raised many of the same arguments rejected by the law judge. We see no grounds to modify his findings.<sup>2</sup>

We cannot agree with respondent's contention that his actions were reasonable in the circumstances. We are hard pressed to envision a situation where respondent's actions could ever be reasonable. Leaving the area of the aircraft when its engines are running and the props turning is inherently dangerous. Further, the law judge found that the respondent stopped the aircraft on a slightly sloping ramp, and failed to chock it, thus increasing the possibility of uncontrolled movement. The law judge found no evidence to support respondent's claim that he was simply following company procedures, and on appeal respondent offers no reason to alter that finding, principles of agency notwithstanding. Rather than stripping pilots of authority to exercise judgment based on education, experience, and conditions, as respondent argues, the law judge's conclusion, reaffirmed here, properly requires that pilots exercise appropriate caution with the machinery they operate. The effect of a 60-day suspension on respondent's

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<sup>1</sup> The law judge's initial decision, an excerpt from the transcript of the hearing, is attached.

<sup>2</sup> Respondent has petitioned for reconsideration of our order, served April 17, 1998 (EA-4655), dismissing his appeal for his failure to timely perfect it. The Administrator has not replied to the petition but did reply to the appeal brief. Counsel, a sole practitioner, was extremely sick at the time the brief on appeal was due, and filed it as soon as he was able. We grant the petition, and reinstate the appeal for consideration on the  
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career should have been considered by respondent before he acted as he did. The financial impact on him is not a factor we consider in mitigation. Administrator v. Mohumed, 6 NTSB 696, 700 (1988), and cases cited there.<sup>3</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's petition for reconsideration is granted and his appeal is reinstated;
2. Respondent's appeal is denied; and
3. The 60-day suspension of respondent's airman certificate shall begin 30 days from the service date of this opinion and order.<sup>4</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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merits.

<sup>3</sup> Respondent's other arguments are also unconvincing. Principles of res judicata do not preclude our finding. Res judicata precludes re-litigation of the same issues. There was no other litigation here. That respondent's employer was not the subject of action by the FAA is not grounds to dismiss the action against respondent. For the same reasons, we reject respondent's related equal protection and due process claims.

<sup>4</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).